

VENTURA COUNTY

Audit Report

RESTITUTION FINES AND COURT-ORDERED RESTITUTION

July 1, 2001, through June 30, 2002



STEVE WESTLY
California State Controller

February 2004



STEVE WESTLY
California State Controller

February 25, 2004

The Honorable Christine L. Cohen
Auditor-Controller
Ventura County
800 South Victoria Avenue
Ventura, CA 93009

Ms. Sheila Gonzalez
Court Executive Officer
Ventura County Courts
800 South Victoria Avenue
Ventura, CA 93009

Dear Ms. Cohen and Ms. Gonzalez:

The State Controller's Office has completed an audit to determine the propriety of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board by Ventura County for the period of July 1, 2001, through June 30, 2002.

The audit disclosed that:

- The county did not distribute state restitution 10% revenues to county agencies responsible for the collection enhancement of restitution fines and court-ordered restitution; and
- The courts did not include a 10% administration fee for restitution fines collected.

If you have any questions, please contact Jerry McClain, Chief, Special Audits Bureau, at (916) 323-1573.

Sincerely,

A handwritten signature in cursive script that reads "Vincent P. Brown".

VINCENT P. BROWN
Chief Operating Officer

WB:jj/ams

cc: Catherine Close, Executive Director
Victim Compensation and
Government Claims Board
Laura Hill, Manager
Revenue Recovery Division
Victim Compensation and
Government Claims Board

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Audit Report

Summary

The State Controller's Office (SCO) performed an audit to determine the propriety of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board (Board) by Ventura County for the period of July 1, 2001, through June 30, 2002. The last day of fieldwork was May 22, 2003.

Ventura County remittances to the State Treasurer for restitution fines and warrants paid to the Board for restitution court orders were correct. The points discussed in the Findings and Recommendations section may affect the amount of those remittances through enhanced collection efforts or additional fees collected.

In addition, the reimbursement of court-ordered restitution is hindered due to various reasons. For example, pursuing the reimbursement for claims that are remitted after the sentencing date may not be cost-effective due to the additional court costs involved, unless the courts and the county are willing to implement a coordinated process among the courts, the District Attorney's Office, and the Probation Department.

Background

State statutes govern the distribution of court revenues, which include restitution fines and court-ordered restitution. Whenever the State is entitled to a portion of such money, the court is required by *Government Code* Section 68101 to deposit the State's portion of court revenues with the County Treasurer as soon as practical and to provide the county auditor with a monthly record of collections. This section further requires that the county auditor transmit the fund and a record of the money collected to the State Treasurer at least once a month.

Government Code Section 68103 requires that the State Controller determine whether or not all court collections remitted to the State Treasurer are complete. *Government Code* Section 68104 authorizes the State Controller to examine records maintained by any court. Furthermore, *Government Code* Section 12410 provides the State Controller with general audit authority to ensure that state funds are properly safeguarded.

The Board was concerned with the accurate and effective administration of restitution fines and court-ordered restitution with respect to the victim compensation program. Consequently, on January 1, 2003, an interagency agreement was made between the SCO and the Board to conduct six field audits of county and court collection systems as they relate to restitution fines and court-ordered restitution.

Objective, Scope, and Methodology

In accordance with the terms of the agreement, the objective of this audit was to determine whether the county and the courts completely and accurately remitted restitution fines and Board court-ordered restitution in a timely manner to the State Treasurer for the period of July 1, 2001, through June 30, 2002.

Pursuant to the interagency agreement, the SCO conducted a field audit of the Ventura County Superior Court and collections entities to assess whether:

- The courts have properly ordered restitution fines and orders in accordance with *Penal Code* Section 1202.4; and
- The policies and procedures established by the courts and the county collection entities ensure that financial assistance made by the Board in accordance with *Government Code* Section 13959 through 13969 was properly collected and reimbursed to the Restitution Fund.

In order to meet the objectives, the auditor reviewed the revenue processing systems within the county's Superior Court, District Attorney's Office, and Auditor-Controller's Office.

The auditor performed the following procedures:

- Reviewed the accuracy of distribution reports prepared by the county, which show court revenue distributions to the State, the county, and cities located within the county;
- Gained an understanding of the county's revenue collection and reporting processes by interviewing key personnel and reviewing documents supporting the transaction flow (Appendix);
- Analyzed the restitution accounts reported in the county's monthly cash statement for unusual variations and omissions;
- Performed tests to identify any incorrect distributions and expanded any test that revealed errors, to determine the extent of any incorrect distributions; and
- Selected 50 cases from the Board's restitution schedule of accounts receivable to determine the timeliness and status of repayments (Schedule 1).

The audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. The SCO did not audit the county's financial statements. The auditor considered the county's management controls only to the extent necessary to plan the audit. This report relates to an examination of court-ordered restitution and restitution fines remitted and payable to the State of California. Therefore, the SCO does not express an opinion as to whether the county's court revenues, taken as a whole, are free from material misstatement.

Conclusion

Ventura County restitution fines in the amount of \$972,075 remitted to the State through the TC-31 process for fiscal year 2001-02 were determined to be correct. Ventura County reported \$6,215 in direct reimbursement payments for court-ordered restitution to the Board during the fiscal year.

The Board remitted \$126,726 to the county under statutory rebate provisions during the fiscal year. These monies are intended to enhance the collection effort related to restitution fines and orders. The county deposited the rebate into the county's General Fund and the court's Operating Fund for general court revenue collection activities.

**Views of
Responsible
Official**

The SCO issued a draft audit report on November 6, 2003. Christine Cohen, Auditor-Controller, responded by letter dated December 2, 2003 (attached), agreeing with the audit results with the exception of Finding 1. The court did not respond to the draft report.

Restricted Use

This report is solely for the information and use of Ventura County and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.



JEFFREY V. BROWNFIELD
Chief, Division of Audits

Schedule 1— Random Sample Results July 1, 2001, through June 30, 2002

A random sample of 50 cases was selected from the Victim Compensation and Government Claims Board's Schedule, VCB Paid Out vs. Restitution Ordered, and provided to the District Attorney. These cases were analyzed in three ways: (1) destination of offender, (2) claim date, and (3) current collection effort. Each of these areas may have an impact on the accuracy and effectiveness of the court-ordered restitution collection process. From these cases the following percentages were derived:

A. Destination of Offender

State:	
State Correctional Facility	56%
Local:	
Formal Probation	32%
Conditional Sentencing	6%
Juvenile	6%
Not Convicted	0%

B. Claims Dates

Before Sentencing	46%
After Sentencing	54%
No Record	0%

C. Current Collection Effort*

No Further Action to Be Taken	62%
Continuing Effort	6%
Collection Satisfied or in Process (State)	24%
Collection Satisfied or in Process (Local)	8%

* Information provided by county staff.

Findings and Recommendations

FINDING 1— 10% restitution rebate not applied to collection activity

The Ventura County Auditor-Controller's Office did not distribute \$126,726 of state restitution rebate revenues to the Probation Department or other county agencies responsible for the collection enhancement of restitution fines and court orders deposited during fiscal year (FY) 2001-02. Of the revenues received, \$63,727 has been posted to the Superior Court's Operating Fund for general collection activity of court revenues. The county interpreted *Government Code* Section 13963(f) to include general collection activities. Failure to make the required distribution of the rebate has not provided for the collection enhancement intended under the statute.

Government Code Section 13963(f) requires the State to pay a rebate to the county probation department or the county agency responsible for collection of funds owed to the Restitution Fund under Section 13967. In addition, the rebate shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The rebates shall not be used to supplant county funding.

Recommendation

The Auditor-Controller's Office should take steps to allocate the rebate revenues to the Probation Department and the District Attorney's Office, or other county agencies responsible for collection of state restitution fines and court-ordered restitution owed to the Board.

In addition, the county should institute procedures to ensure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board and discuss returning the funds.

County's Response

We disagree with this finding. Only the Collections Division of Superior Court is responsible for the actual collection of funds. Collection activity does not and cannot occur prior to the establishment of an account receivable. The District Attorney facilitates that establishment, but these activities do not include actual recovery of funds. Since the District Attorney is not responsible for the collection of funds, the rebate cannot be distributed to that agency.

Since collection activities are performed by the Court, the County has no control over how the Court's resources are deployed. However, a review of total restitution dollars recovered over the last six years, shown below, clearly demonstrates that the Court does indeed dedicate resources to the pursuit of these accounts.

FY 1997-98	798,056
FY 1998-99	838,386
FY 1999-00	1,027,744
FY 2000-01	1,017,391
FY 2001-02	1,032,310

FY 2002-03 1,232,978

The County compensates the Court for their collection services in the amount of 20% on the gross receipts. The above restitution collections comprise approximately 6% of the total collections. By comparison, the rebate revenues fund only 2% of the County's cost for the Court's services. This clearly indicates that the rebates are not being used to supplant County funding.

Since the collection function is completely under the control of the Court, and the County pays for these services, the rebate revenue is being used for the intended purpose.

SCO's Comment

Government Code Section 13963(f) states, "The board shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967. . . ." Collection is defined as the act or process of collecting. The collection process for state victim compensation begins with the initial filing of a claim by the victim. The District Attorney's Office is a key element in initiating the county's collection process, because the office is responsible for filing victim restitution claims with the court. If the claims are not filed in a timely manner, they may not be included in the court order. Consequently, the collection process can go no further.

FINDING 2— 10% administration fee not included in state restitution fines

Ventura County Courts did not include a 10% administration fee for state restitution fines collected.

Effective January 2000, *Penal Code* Section 1202.4(1) allows an administration fee to be levied, not to exceed 10% of the state restitution fines collected. The fee can be imposed at the board of supervisors' discretion. The fees are to be deposited into the county General Fund for the use and benefit of the county.

Failure to establish the administration fee causes county resources to be understated and may lessen the enhancement effort to collect state restitution fines.

Recommendation

The county should take steps, after a board resolution, to levy the 10% administration fee for the collection of state restitution fines.

County's Response

We agree with this finding. However, the probability of county revenues increasing due to the imposition of the PC 1202.4(1) fee is highly uncertain. Pursuant to AB-3000, the distribution of this fee is classified under Priority 4, hence would be included in the last moneys collected. More than likely, it would only result in a shift of the distribution of Priority 4 revenues, diminishing the recovery of probation fees. Currently the County does impose a fee under PC 1203.1(l) which is intended to cover administrative cost of collecting restitution. Imposing the PC 1202.4(1) fee to cover the administrative cost of collecting restitution fines could be considered duplicative, since these activities are conducted simultaneously and the costs are

virtually indistinguishable.

Appendix— Transaction Flow for Court-Ordered Restitution July 1, 2001, through June 30, 2002

The following narrative describes the court-ordered restitution process for the various entities in Ventura County involved in court-ordered restitution.

District Attorney's Office

Claims are first filed by the Victim Compensation and Government Claims Board to this office. It is this office's responsibility to file the claim with the court and have it placed in each offender's court file.

When the claim is filed **prior** to the sentencing date, the claim should be part of the court proceedings. Restitution claims, victim, and amounts should be documented with the Proceedings Sentence/Probation Order.

When the claim is filed **after** the sentencing date, claims are much more difficult to file against the offender. The offender may have to be brought back into court. If the offender has been sentenced to a state correctional facility, it is often not cost-effective to proceed with the claim.

Superior Court

Upon conviction, the court is responsible to disclose fines and claims filed against the offender. Upon sentencing, the court prepares a court order (i.e., Sentence/Probation Order) and includes a restitution order (i.e., Judgment and Victim Restitution Order). Each court case has a court docket number assigned. A database docket file is maintained for each case.

Probation Department

Each offender is assigned a probation office. A tracking file is kept on each offender. When the offender's file includes a victim compensation claim, the probation restitution specialist prepares a collection order card. This is sent to the court for collection.

**Attachment—
County Auditor-Controller's Response
to Draft Audit Report**

DEC-02-2003 15:31

VENTURA COUNTY AUDITOR

805 654 5081 P.02/04

CHRISTINE L. COHEN
AUDITOR-CONTROLLER
County of Ventura
800 South Victoria Avenue
Ventura, Ca 93009-1540



CHIEF DEPUTIES
BARBARA J. LOPEZ
JAMES M. TAMEKAZU
LOUISE WEBSTER
SANDRA BICKFORD

December 2, 2003

Jerry McClain, Chief, Special Audits Bureau
State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Subject: Court Restitution Fines Audit

Dear Mr. McClain:

We received the State Controller's draft audit report regarding the Court Restitution Fines audit dated November 6, 2003 on November 17, 2003. This audit was for the Victim Compensation and Government Claims Board (Board) for the period of July 1, 2001, through June 30, 2002. The response was due 15 days after receipt or December 2, 2003.

The primary audit findings were that:

- The County remitted the correct amount of restitution fines to the State.
- The County did not distribute state restitution 10% revenues to county agencies responsible for the collection enhancement of restitution fines and court-ordered restitution; and
- The courts did not include a 10% administration fee for restitution fines collected.

Enclosed is the County's response prepared by our County Executive Office.

It is our understanding that the audit was essentially a study seeking ways to enhance restitution recoveries for the restitution program. Comments were made during the audit that District Attorney and Probation should receive the 10% revenues even though they are not involved in direct collection, but in supportive services. In addition, the imposition of administrative costs allowed by P.C. 1202.4(l) was suggested for General Fund reimbursement, although at the Priority 4 level, very little would be collected.

We believe that the Victim Compensation and Government Claims Board understands that there are many factors impacting payment by convicted persons, such as their own lack of funds and the fact that 54% of the sample claims were filed after sentencing, and not by County's lack of effort.

DEC-02-2003 15:31

VENTURA COUNTY AUDITOR

805 654 5081 P.03/04

Jerry McClain, Chief, Special Audits Bureau
December 2, 2003
Page 2

Courts is responsible for the direct collection of restitution payments through a service agreement. The Courts collection cost, including restitution efforts, is totally funded by General Fund in Ventura County. Therefore, we believe we have followed the directive of the government code.

If you have any questions or need further information, please call me at (805) 654-3151.

Sincerely,



CHRISTINE L. COHEN
Auditor-Controller

Enclosure

cc: John F. Johnston, County Executive Officer
Paul Derse, County Executive Office

DEC-02-2003 15:31

VENTURA COUNTY AUDITOR

805 654 5081 P.04/04

"Restitution Fines and Court-Ordered Restitution"
SCO Draft Audit Report November 2003
CEO Comments

Finding 1: 10% restitution rebate not applied to collection activity

We disagree with this finding. Only the Collections Division of Superior Court is responsible for the actual collection of funds. Collection activity does not and cannot occur prior to the establishment of an account receivable. The District Attorney facilitates that establishment, but these activities do not include actual recovery of funds. Since the District Attorney is not responsible for the collection of funds, the rebate cannot be distributed to that agency.

Since collection activities are performed by the Court, the County has no control over how the Court's resources are deployed. However, a review of total restitution dollars recovered over the last six years, shown below, clearly demonstrates that the Court does indeed dedicate resources to the pursuit of these accounts.

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Since the collection function is completely under the control of the Court, and the County pays for these services, the rebate revenue is being used for the intended purpose.

Finding 2: 10% administration charge not included in state restitution

We agree with this finding. However, the probability of county revenues increasing due to the imposition of the PC 1202.4(l) fee is highly uncertain. Pursuant to AB-3000, the distribution of this fee is classified under Priority 4, hence would be included in the last moneys collected. More than likely, it would only result in a shift of the distribution of Priority 4 revenues, diminishing the recovery of probation fees. Currently the County does impose a fee under PC 1203.1(l) which is intended to cover administrative cost of collecting restitution. Imposing the PC 1202.4(l) fee to cover the administrative cost of collecting restitution fines could be considered duplicative, since these activities are conducted simultaneously and the costs are virtually indistinguishable.

TOTAL P.04

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<http://www.sco.ca.gov>